No. 373

Office Supreme Court
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JOHN J. FEY, CL

United States Court of Appeals

FOR THE FIRST CIRCUIT

ISADORE ABERLIN, Plaintiff-Appellant, JAMES ZISMAN, *et al.*, Defendants-Appellees.	No. 5218
ISADORE ABERLIN, Plaintiff-Appellant, JAMES ZISMAN, *et al.*, Defendants-Appellees.	No. 5222

APPENDIX TO APPELLANT'S BRIEF

RICHARD L. WILDER,
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Boston, Mass.

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Attorneys for Plaintiff-Appellant.

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Docket Entries.

United States District Court

DISTRICT OF MASSACHUSETTS

I, JOHN A. CANAVAN, Clerk of the United States Disrict Court, District of Massachusetts, do hereby certify that the following entries are on the Civil Action Docket in the cause entitled:

Civil Action No. 56-215-S

ISADORE ABERLIN

v.

JAMES ZISMAN and LENORE ZISMAN

1956		
Mar.	8	Complaint (Jury trial claimed) filed Summons issued
	15	Summons retd by Marshal served Mar. 12, 1956 filed
Apr.	2	Answer of deft. James Zisman filed
	2	" " " Lenore Zisman filed
	24	Plaintiff's notice of taking deposition of John Porter, M. D. filed
	24	Plaintiff's notice of taking deposition of John MacKenzie, M. D. filed
May	24	Depositions of Dr. John Porter III and Dr. John M. MacKenzie filed
June	19	Plaintiff's notice of taking deposition of the Commissioner, Department of Mental Health filed, Subp. issued
	19	Plaintiff's notice of taking deposition of Selma D. Aberlin filed Subp. issued
	19	Plaintiff's notice of taking deposition of the Commission, Department of Mental Health filed, Subp. issued

1956

June	19	Plaintiff's notice of taking deposition of Selma D. Aberlin filed
	19	Plaintiff's notice of taking deposition James Zisman, filed
July	30	Deposition of Alice M. Amero filed
	30	Deposition of Selma D. Aberlin, filed
	31	Plaintiff's notice of taking deposition of Kathryn Meredith of N. Y. at N. Y. Aug. 13, 1956 filed (addressed to James Zisman, deft. pro se.)
	31	Plaintiff's notice of taking deposition of same party, same date, same time, filed (addressed to James Zisman, Esquire, for deft. Lenore Zisman)
Aug.	15	Plaintiff's motion to compel deft. James Zisman to make true and proper answer to oral depositions filed
	15	Plaintiff's notices (2) to take deposition of Catherine Meredith of N. Y. Aug. 29, 1956 filed
Sept.	17	Sweeney, Ch J. Hearing on plaintiff's motion to compel deft. James Zisman, to make true and proper answer to oral depositions, taken under advisement.
	19	Sweeney, Ch J. Memorandum. The plaintiff's motion is allowed as to prayers (a) and (b) but is denied as to prayer (c); defendants ordered to pay to the plaintiff costs in the sum of $100.00. Mem. filed. Copies mailed to counsel Sept. 19, 1956.
Sept.	22	Plaintiff's notice of taking deposition of deft. James Zisman Esq. filed.
Oct.	1	Sweeney, Ch J. Order, in accordance with the Memo. of the Court, allowing motion as to prayers (a) and (b) but denying motion as to prayer (c) and defts to pay to the plaintiff costs in the sum of $100.00 on or before Nov. 1, 1956. Order filed. Copies mailed to counsel Oct. 1, 1956

1956

Oct. 30 Sweeney, Ch. J, Hearing relative to deposition. Ordered defendant to state reasons why child was not properly cared for.

30 Sweeney, Ch J. Ordered payment of costs deferred until trial.

Nov. 30 Plaintiff's motion for writ of protection filed.

30 Sweeney, Ch. J. Plaintiff's motion for writ of protection allowed.

30 Writ of protection issued.

Dec. 4 Sweeney, Ch. J. Jury trial begins : jury empanelled, Virginia Lougee, Foreman, evidence adjourned to Dec. 5, 1956.

Dec. 5 Sweeney, Ch. J. Jury trial continues; evidence, defendant's motions (2) for directed verdict filed and taken under advisement. Plaintiff's requests for ruling filed. Arguments. Charge: deliberation committed to Jury; verdict for defts. Verdict filed.

6 Sweeney, Ch J. Judgment after trial and in accordance with the verdict of the jury for the defendants with costs taxed at . Judgment filed. Copies mailed Dec. 6, 1956.

7 Writ of protection returned by Marshal with Marshal's notice of issuance etc., thereon filed. Defendant's motion for counsel fees filed.

Dec. 14 Plaintiff's motion for new trial filed.

17 Notice of appeal filed by the plaintiff. C of n/a given in hand to James Zisman. Bond for costs on appeal filed (Indemnity Ins. as surety thereon)

26 Sweeney, Ch J. Hearing on defendant's motion for counsel fees, motion denied.

26 Sweeney, Ch J. Hearing on plaintiff's motion for new trial motion denied.

Docket Entries.

1957

Jan. 21 Original papers for record on appeal delivered to the U. S. Court of Appeals.

22 Order of Court from the U. S. Court of Appeals "Upon motion of appellant, it is ordered that the time for filing the record on appeal and docketing this case be and the same hereby is enlarged to and including Feb. 26, 1957."

23 Notice of Appeal filed by plaintiff. Copy of n/a mailed to James Zisiñan, Esq., 646 Warren St. Roxbury 21, Mass.

24 Clerk's certificate in re 2nd notice of appeal delivered to the U.S.C.A.

Feb. 19 Stenographic records of trial (2 vols) on Dec 5 & 6, 1956 filed.

26 Supplemental certificate delivered to the U. S. Court of Appeals.

Bill of Complaint.

The plaintiff complaining of the defendants says and alleges:

1. That the plaintiff is a citizen of the State of New York, residing in the County of New York, City of New York, and the defendants are residents of the State of Massachusetts, residing at Marjorie Road, in the Town of Stoughton, State of Massachusetts.

2. That the plaintiff is the father of Dorothy Gail Aberlin, an infant eleven years of age.

3. That on or about April 1, 1955 for sometime prior thereto the plaintiff had and was entitled to the custody of his said minor daughter, Dorothy Gail Aberlin, and said infant was on said date residing with him in his home at 165 W. 20th Street, in the said City of New York.

4. That prior to April 1, 1955 the defendants did conspire to kidnap your plaintiff's infant daughter and thereafter on April 1, 1955 the defendant, James Zisman, maliciously came into the State of New York and without notice to your plaintiff and without his assent did kidnap and take from the State of New York your plaintiff's said minor daughter, Dorothy Gail Aberlin, and did transfer her to and keep her within the Commonwealth of Massachusetts against the will and wishes of your plaintiff.

5. That as a result of the wrongful and malicious acts of the defendants herein complained of and as a direct consequence of their unjustified disregard for your plaintiff's rights, your plaintiff has been wrongfully and wholly deprived and robbed of the security,

love and affection of his said minor daughter and is still being so deprived of her companionship and assistance; that he has been and still is being deeply aggrieved and depressed and suffered untold embarassment and despair and has been and still is being suffer cruel and excruciating mental anguish, harrassment and despair and has been and still is being compelled to spend large sums of money to gain back the custody of his infant daughter, all to his great and serious loss and damage in the sum of $250,000.00.

WHEREFORE, your plaintiff demands judgment against the defendants in the sum of Two Hundred & Fifty Thousand ($250,000.00) Dollars, besides costs.

A trial by Jury is demanded.

ISADORE ABERLIN.

(Verified March 6, 1956.)

RICHARD L. WILDER,
Attorney for Plaintiff,
11 Beacon Street, Boston, Mass.

Ca 7-3848

Answer of Defendant James Zisman.

Now comes the defendant, James Zisman, in the above entitled action and for Answer to the Complaint says as follows:

1. The Defendant admits the allegations set forth in Paragraph 1.

2. The Defendant admits the allegations set forth in Paragraph 2.

3. The Defendant denies the allegations set forth in Paragraph 3.

4. The Defendant denies the allegations set forth in Paragraph 4.

5. The Defendant denies the allegations set forth in Paragraph 5.

The Defendant further answering says that the Plaintiff has instituted the present proceedings in an attempt to circumvent the Statutes, Decrees, Findings and Orders of the Courts of the Commonwealth of Massachusetts.

The Defendant further answering says that the present proceedings have been instigated by Dora Aberlin, a member of the New York Bar, with offices at 11 Broadway, New York City, and a sister of the plaintiff, with the sole purpose of harassing the Defendant.

N.B

WHEREFORE THE DEFENDANT PRAYS:

1. That the Complaint be dismissed and Judgment entered for the Defendant.

2. That the Plaintiff be ordered to pay all costs of these proceedings, including reasonable counsel fees.

3. For such other and further relief as to this Honorable Court may be deemed meet and proper.

JAMES ZISMAN
James Zisman
Pro. Se

Answer of Defendant Lenore A. Zisman.

(Identical to answer of James Zisman.)

(2) Mr. Wilder: I would like to read into the record the deposition of one Alice M. Amero, taken at Boston, June 29, 1956, in the presence of Mr. Zisman and myself.

(3) JAMES ZISMAN, Sworn.

Direct Examination by Mr. Wilder:

Q. Will you please state your name, sir? A. James Zisman.

Q. Where do you live, sir? A. 121 Marjorie Road, Stoughton, Massachusetts.

Q. What is your occupation? A. I have been an attorney, as of last month, for 28 years.

(4) The Witness: I think I met the plaintiff once or twice at 1687 Commonwealth Avenue, at which time I was calling on my present wife. You asked me that question, I have to answer it.

Q. I just asked you how long. A. Oh, it was a matter of, maybe some six years ago, or so. I think I met him once or twice.

Q. When did you next meet the plaintiff, Mr. Zisman? A. I did not meet him after that, I spoke to him.

Q. So from the time you first met him six years ago, up until April 1st, 1955, had you ever personally met the plaintiff? A. No.

Q. Up until April 1st, 1955, had you ever been in the plaintiff's home in New York City? A. No.

Q. Did you know where that home was? (5) A. I was informed that it was in--if I can refresh my recollection (consulting papers).

* * *

Q. On or about March 25, 1955, did you know that the plaintiff's daughter Gail was living with her father, yes or no? A. No.

Q. You didn't know she was living with her father? A. I knew that she was living in the same apartment.

* * *

Q. Mr. Zisman, did you on or about the 25th of March prepare a petition, such as that? A. Yes, I did.

Q. Is that a true copy of that petition? (6) A. There is no question about it.

Q. Did you and your wife, in your presence, sign that petition? A. Yes.

* * *

Q. Mr. Zisman, did you personally prepare this petition? A. Yes, I did.

Q. Again I will ask you if this child was residing with her father, did you know? A. Well, if she was in the same household with her father and her aunt and another uncle.

(7) Q. Did you not in personally preparing this petition state, said minor child is temporarily residing with her father but is not being properly cared for? A. That is correct.

Q. Now, Mr. Zisman, how many times had you been in the home in which this child had been residing prior to your filing this petition? A. I have never been there.

* * *

(8) Q. Did you ever at any time call the father to inquire as to the circumstances under which the child was living? A. No.

* * *